

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** May 7, 2003

**To:** The Commission  
(Meeting of May 8, 2003)

**From:** Alan LoFaso  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 816 (Reyes)** - Public Utilities Commission: direct transactions.

As Amended April 8, 2003

**Legislative Subcommittee Recommendation:** Support, if amended.

**Summary:** This bill would reinstate direct electricity transactions between retail end use customers and energy service providers, and would assign specified cost recovery responsibilities to publicly owned electric utility (POU) annexations and formations occurring within an electrical corporation's (ECs) territory.

**Digest:** Existing law prohibits direct access transactions until DWR no longer supplies power to EC customers (Water Code §80110).

Existing law, authorizes the Department of Water Resources (DWR) to recover costs incurred in connection with electric power purchases and transmission, scheduling and other related expenses.

Existing law imposes community choice aggregator customers to cost recovery responsibility for the following:

- (a) A charge equivalent to the charge imposed by the Commission to recover DWR bond related costs.
- (b) DWR's estimated net unavoidable power purchase contract costs, determined by the Commission.
- (c) EC's unrecovered past undercollection attributable to those customers.
- (d) ECs' estimated net unavoidable power purchase contracts costs attributable to those customers. (PU Code §366.1(e), (f).)

This bill would require the Commission to reinstate direct transactions between retail end use customers and energy service providers (ESPs) when the following three

conditions are met:

- (1) A cost responsibility surcharge (CRS) is established by the Commission for customers that have exercised their right to direct access.
- (2) Revenue bonds have been issued by DWR for costs it has incurred for electric power purchases and transmission, scheduling and other related expenses.
- (3) Electrical corporations are procuring electricity under procurement plans.

Therefore, AB 816 would lift the suspension of direct access. To date, each of the conditions required by the bill has been met. Specifically:

- The Commission established the CRS in D. 02-11-022.
- DWR revenue bonds were sold after the Commission's action in D. 02-10-063 (as modified in D.02-11-074 and D. 02-12-082).
- EC procurement resumed on January 1, 2003, pursuant to D. 02-10-062.

This bill would also require a POU that provides electric service for existing or new load within the service territory of an EC is responsible for the same cost recovery responsibilities determined by the Commission for community choice aggregators (as described above) "to prevent cost shifting of recoverable costs between customers" (proposed PU Code sec. 9607.5(a)). The POU would be exempt from these costs for new load served within its "exclusive electric service territory" as it existed on February 1, 2001 (proposed PU Code sec. 9607.5(b)).

This bill would also provide that a POU determine the "appropriate method by which to recover the costs imposed [by the bill] to its customers" (proposed PU Code sec. 9607.5(c)). It would also require the "cost recovery mechanism [to] ensure that any charges payable to [DWR] and [ECs] ... are promptly remitted to the party entitled to payment" (Id).

The measure imposes POU responsibility for costs specified in statute that are "determined by the commission" (see existing PU Code sec. 366.2 (e), (f) and proposed PU Code sec. 9605.7(a), above). Therefore, it would appear that a POU's responsibility to determine an appropriate cost recovery method is limited to determining the method of collecting the charges from retail customers served by that POU.

**Analysis:** The most significant part of this measure would lift the suspension of direct access transactions. The remaining element of the bill would impose cost responsibility requirements on specified POU expansions.

AB 816 would rely on existing CRS decisions to set the rules for resumed retail competition. This lifting of the direct access suspension is premature as the Commission is still actively considering several unresolved issues in its rulemaking to implement the suspension of direct access (R. 02-01-11). This proceeding is reviewing many issues necessary to be resolved before the restoration of direct access, such as the impact on bundled customers and the time necessary to repay costs incurred during 2001.

Moreover, AB 816 relies on new CRS determinations for new, post-energy crisis direct access customers. Moreover, the bill would rely on another CRS determination—that for community choice aggregators—to apply to POU annexations. This new CRS, required pursuant to AB 117, has not yet been developed.

Finally, AB 816 would make significant retail market changes as the Commission is working with sister agencies, the Energy Commission and the California Power Authority, to develop Energy Action Plan with sister agencies. The plan's goal is to ensure that adequate, reliable, and reasonably-priced electrical power and natural gas supplies, including prudent reserves, are achieved and provided through policies, strategies, and actions that are cost-effective and environmentally sound for California's consumers and taxpayers.

The EAP incorporates market-based approaches to addressing the state's energy needs. The EAP recognizes the state's current hybrid energy market and that state policies can capture the best features of a vigorous, competitive wholesale energy market and renewed, positive regulation. Moreover, the EAP intends to send a signal to the market that investments in new infrastructure will be rewarded.

As the EAP works within the current hybrid market, it poses the best chance of achieving these goals with minimal uncertainty. Moreover, the EAP's demand reduction and renewables goals stand the best chance of being accomplished in the near term without substantial change in the retail market.

Moreover, in the procurement rulemaking (R. 01-10-024), the Commission is fulfilling its direction under SB 1078 to develop a means to implement the RPS, as it is to be applied to ESPs operating under direct access.

Until this and other mechanisms are firmly in place, a significant expansion of direct access would inhibit several goals included in the EAP, including an accelerated RPS implementation target, energy efficiency and demand reduction efforts, and integrated resources planning.

**RECOMMENDED AMENDMENTS:**

1. Restoration of Direct Access should be at the discretion of the Commission;
2. The Commission should be empowered to determine the appropriate CRS for customers leaving utility service addressed in AB 816; and
3. The bill's identification of responsibilities between the Commission and POUs for determining cost recovery should be clarified. It would appear that the Commission would be responsible for determining the cost recovery in the aggregate and the POU would be responsible for determining the method of collecting the charges from retail customers. The responsibilities should be specified more clearly.

**Related Legislation:**

- AB 428 (Richman) would establish a core/non-core retail structure.

- SB 888 (Dunn, et.al.) would repeal substantial portions of the AB 1890 of 1996 including direct access transactions.

**Legislative History:**

Assembly U&C: 11-1 (do pass as amended) (4/1/03)

**SUPPORT/OPPOSITION**

Support: Alliance for Retail Energy Markets, APS Energy Services, California Manufacturers & Technology Association, Pacific Gas & Electric (if amended), San Diego Regional Chamber of Commerce, School Project for Utility Rate Reduction, Strategic Energy, Southern California Edison, Sempra (if amended).

Opposition: California Municipal Utilities Association, California Farm Bureau, Federation, City of Riverside Public Utilities, Northern California Power Authority, Redding Electric Utility.

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**Date:** May 7, 2003

**BILL LANGUAGE:**

BILL NUMBER: AB 816      AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY   APRIL 8, 2003  
AMENDED IN ASSEMBLY   MARCH 25, 2003

INTRODUCED BY   Assembly Member Reyes  
(Principal coauthors:   Assembly Members Canciamilla and Richman)

FEBRUARY 20, 2003

An act to add Section 9607.5 to the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to electric power.

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as amended, Reyes. Local publicly owned electric utilities: Public Utilities Commission: direct transactions.

(1) Existing law authorizes the Department of Water Resources to administer existing contracts for the purchase of electric power, and to sell power to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs. Existing law imposes on retail end use customers of electrical corporations and community choice aggregators nonbypassable charges to repay certain costs of the department and electrical corporations.

This bill would additionally impose on a local publicly owned electric utility that begins serving electricity *after February 1, 2001*, to existing or new load in the service territory of an electrical corporation, as that territory existed on February 1, 2001, responsibility for those repayment costs, as determined by the Public Utilities Commission. The bill would require the local publicly owned electric utility to determine the appropriate method by which to recover the costs imposed from its customers. The bill would require the cost recovery mechanism to ensure that any charges payable to the department and to the electrical corporation by a retail end use customer are promptly remitted to the party entitled to payment. *By imposing new responsibilities on local publicly owned electric utilities, this bill would impose a state-mandated local program.*

(2) Under existing law, the ~~Public Utilities Commission~~ *commission* has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. *Existing law requires the commission to authorize direct transactions between electricity suppliers and end use customers.* Existing law suspends, after a period of time to be determined by the commission, the right of a retail end use customer to acquire electricity from other electric service providers pursuant to direct transactions, until the department no longer supplies electricity under those provisions.

This bill would require the commission to reinstate the right of retail end use customers to acquire electricity from other electric service providers subject to specified conditions. Because a violation of an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating

a new crime.

(3) ~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason. The California~~

*Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 9607.5 is added to the Public Utilities Code, to read:

(a) To prevent cost shifting of recoverable costs between customers, a local publicly owned electric utility that begins serving electricity *after February 1, 2001*, to existing or new load in the service territory of an electrical corporation, as that territory existed on February 1, 2001, is responsible for the costs described in subdivisions (d), (e), (f), and (g) of Section 366.2, as determined by the commission.

(b) The local publicly owned electric utility is not responsible for the costs described in subdivisions (d), (e), (f), and (g) of Sections 366.2 when it serves new load within its exclusive electric service territory as that *exclusive electric service* territory existed on February 1, 2001.

(c) The local publicly owned electric utility shall determine the appropriate method by which to recover the costs imposed pursuant to this section from its customers. The cost recovery mechanism shall ensure that any charges payable to the Department of Water Resources and to the electrical corporation by a retail end use customer are promptly remitted to the party entitled to payment. Charges imposed pursuant to this section are nonbypassable.

SEC. 2. Section 80110 of the Water Code is amended to read:

80110. (a) The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate.

~~Such~~ Those revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's *State of Emergency Proclamation*, dated January 17, 2001. For purposes of this division and except as otherwise provided in this

section, the ~~Public Utilities Commission's~~ commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission. In no case shall the commission increase the electricity charges in effect on ~~the date that the act that adds this section becomes effective~~

February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until ~~such time as~~ the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.

(b) The right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be reinstated by the ~~Public Utilities Commission~~ commission, once each of the following conditions are met:

(1) The ~~Public Utilities Commission~~ commission has established a cost responsibility surcharge for customers that opt for direct transactions. Each retail end use customer that has purchased power from an electrical corporation on or after February 1, 2001, shall bear a fair share of the department's electricity purchase costs that are recoverable from electrical corporation customers in commission-approved rates.

(2) The State of California has issued revenue bonds pursuant to Chapter 2.5 (commencing with Section 80130).

(3) The electrical corporations are procuring electricity under procurement plans pursuant to Section 454.5 of the Public Utilities Code.

(c) The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to those customers.

~~SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies

*and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.*